adjudged a bankrupt, during the pendency of the suit. At the instance of the plaintiff the state court appointed a receiver of the defendant as an insolvent judgment debtor, and by proper proceedings this indemnity policy was assigned over to him. Thereupon the plaintiff compromised his claim with the receiver and the court made an ex parte order authorizing the receiver to issue his demand promissory note in satisfaction of the judgment, and to begin suit against the insurance company, which was done. On the motion of the defendant the ex parte order was vacated. The receiver appeals. *Held,* that the payment by the receiver's note was not such a payment of the claim as would fix the insurer's liability. *Stenbohm* v. *Brown-Corliss Engine Co. et al.* (1909), — Wis. —, 119 N. W. 308.

The court very properly saw in the ex parte proceedings "a mere subterfuge resorted to for the purpose of making a nominal compliance with the contract." In *Kennedy* v. *Fid. & Cas. Co.*, 100 Minn. 1, cited in the principal case, it was held that payment by a note given in good faith in actual settlement of the claim satisfied the requirement of actual payment. But there the court comments on the fact that the note given was good commercial paper. Indemnity insurance of this kind is in no sense made for the benefit of the injured employee, and he cannot sue the insurance company even after he has recovered judgment, the insured being hopelessly insolvent. *Beyer* v. *Int. Aluminum Co.*, 101 N. Y. S. 83. Neither can he when actual payment, as in the principal case, is necessary to fix the insurer's liability, charge the insurer as garnishee. *Allen* v. *Aetna Life Ins. Co.*, 145 Fed. 881. Had plaintiff's judgment been provable in the bankruptcy proceedings, such proceedings would have been a payment pro tanto of the claim and would have given the trustee a right of action against the insurer. *Traveller's Ins. Co.* v. *Moses*, 63 N. J. Eq. 260. In the *Kennedy* case, supra, the fact that the note was good commercial paper proves that the insurance money, while it would be available for the purpose, was not depended upon to meet the note, but it is peculiarly patent in the principal case that the receiver who had no assets in his possession but the indemnity policy, must necessarily look to the proceeds of the insurance to pay the note, and the case is, perhaps, only remarkable as an ingenious attempt to enlarge the doctrine of the *Kennedy* case. Under the latest forms of indemnity policies it would seem that the insured is bound to resist the claims of the injured employee, but whether, after judgment rendered, he is bound either legally or in good conscience to resist satisfaction has never been directly decided.

INTOXICATING LIQUORS—ILLEGAL SALE—ORDINANCE—VALIDITY.—Defendant, convicted in the police court of Wichita for maintaining a nuisance by keeping a place where intoxicating liquors were sold in violation of a city ordinance, enacted in pursuance of a state statute relating to cities, carried the case to the supreme court on the theory that the ordinance was void because there was lack of uniformity in the punishment prescribed for violators of the law. Defendant urged that as city jails are not uniform in quality, some being reasonably comfortable while others are so exposed to the weather or

unhealthful conditions as to imperil the lives of those confined therein, any ordinance providing for jail sentences is void for lack of uniformity. *Held,* "If a joint keeper in any city thinks the jail there worse than in other cities, the law will permit him to move his business to wherever he can find a jail that is satisfactory." The ordinance is not void. *City of Wichita* v. *Murphy* (1908), — Kan. —, 99 Pac. 272.

In the supreme court the fact that the city ordinance had been repealed was advanced as a plea in bar to the action. As the repeal was not made until after judgment below, such repeal under the Kan. Gen. St., p. 998, § 1, is not a good plea in bar. *State* v. *Boyle,* 10 Kan. 113; *State* v. *Crawford,* 11 Kan. 32. The purpose of the state statute concerning the offense of selling liquors without a license, upon which the above ordinance was based, was to secure uniformity, leaving nothing to the discretion of the local governing bodies. *In re Van Tuyl,* 71 Kan. 659. A municipal corporation has no right to enforce obedience to the ordinances which it has the power to pass, by fine or imprisonment or other penalty, unless that right has been unquestionably conferred by the legislature, for this is inflicting a punishment for the commission or omission of an act declared an offense, a prerogative which, as a rule, pertains to the sovereign only. *Anderson* v. *City of Wellington,* 40 Kan. 173, 19 Pac. 719.

INTOXICATING LIQUORS—UNLAWFUL SALES—"LIQUOR."—Defendant was charged with unlawfully selling intoxicating liquors in less quantities than five gallons outside of any town or city. Cases of 26 bottles measured only 4½ gallons, and witnesses testified that they consumed considerable time so as to allow foam that arose on the beer when poured into the measure to settle so that the measure was full of liquid. Defendant claimed this measurement was unreliable. *Held,* that the gas or foam arising when the liquor is released cannot be considered in determining the quantity of the liquor. *People* v. *Nylin* (1908), — Ill. —, 86 N. E. 156.

It is defendant's contention that the beer was charged with gas, which is a component part of the beer, and that when released it disappeared so that a part of the contents of the bottle was not and could not be measured by the method the witnesses adopted. The court, however, dismissed this contention, holding that the measurement intended by the statute is a measurement of the quiet liquor after it has been released from confinement. In the language of the lower court, "Gas is an aeriform fluid but it is not a liquor" within the meaning of the statute concerning intoxicating liquor. In giving this decision the judge recognized the principle of physics that gas is a fluid, but in the interests of the law he decided for the first time directly that the gas or foam, whether caused by fermentation or by the method of bottling, is no part of the liquor. While perhaps the gas formed by fermentation could, with more reason, be held a component part of the liquor, still even this might open the door to fraud. Under Webster's definition of liquor as a liquid or fluid substance, gas might be included as part of the beer. The court cites no cases upon the point involved and none have been found.